IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Crl.Rev.Pet.No. 3914 of 2007()

CMP.1232/07 ON THE FILE OF JFCM-I, THIRUVANANTHAPURAM

REVN. PETITIONER: COMPLAINANT:

K.S.CHANDRAN, S/O.K.KUNJUSANKARAN,
KARTHIK VISION, SREEVIHAR COMPOUND
W & C HOSPITAL ROAD, THYCAUD P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3914 OF 2007

Dated this the 2nd day of November, 2007

O R D E R

The revision petitioner is the complainant in a private complaint filed as CMP No.1232/07 to prosecute the accused under section 138 of the Negotiable Instruments Act, 1881 in respect of a cheque involving a sum of Rs.72,500/-. The complaint was filed on 1.3.2007. After verification of the complaint on 23.4.07, the complaint was posted to 23.7.07 on which date the complaint has been dismissed under section 203 Cr.P.C. for the reason that the complainant was absent.

2. In as much as the complaint was dismissed behind the back of the accused and before the issuance of process to the accused, the accused need not be heard on this revision. Dismissal of a complaint under section 203 Cr.P.C. can only be on the ground that the Magistrate is of opinion that there is no sufficient ground for proceeding. [See the decision reported in ***Fr.Abraham Vs. Thomas*** (1989 (1) KLT 85)]. Apart from the fact that the complaint cannot be dismissed for the non-appearance of the complainant, it is not known as to what was the power of the

Magistrate for dismissing the complaint for the non-appearance of the complainant. If there was default on the part of the complainant in paying the process, he could have been visited with the penalty of a dismissal under section 204(4) Cr.P.C. That has not been done obviously because there was no default on the pat of the complainant in remitting the process fee. The impugned order dated 23.7.07 dismissing the complaint under section 203 Cr.P.C. is set aside and the complaint shall stand restored to file. The revision petitioner shall appear before the court below without any further notice on 29.11.07 and shall be ready for the further progress of the complaint.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

aks